HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.W.P. No. 120 of 2005

Date of Decision:3.5.2007

Fitha ……. Petitioner.

versus

State of H. P. & others …….. Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? No

For the petitioner : Mr. Rakesh Jaswal, Advocate.

For respondents 1 & 2 : Mr. C. B.Singh, Dy. Advocate General.

For respondent No.3 : Mr. Jagdish Thakur, Advocate.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open Court in presence of the learned counsel for the parties.

The present petitioner has assailed the order dated 20th December, 2004, passed in case No. 96 / 2004, titled as Dhimu Ram vs. Fitha & others. An application for consolidation was filed by respondent Dhimu Ram under Section 30(2) of the H. P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (hereinafter referred to as 'the Act'). It was considered and after due deliberations, in the presence of the parties, an order there upon, was passed on 15th August, 1985 (as given by the counsels) by the Consolidation Officer, Hamirpur. Fitha

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Whether reporters of local papers may be allowed to see the judgment?

Ram filed an appeal under Section 30 (3) of the Act before the Settlement Officer, Consolidation, Hamirpur. The same was registered as case No. 165 / 2000 titled as Fitha Ram vs. Dhimu Ram and was dismissed on the ground of delay and laches of 15 years vide orders dated 9th October, 2000. The matter did not rest there. Petitioner further instituted an appeal under Section 30(4) of the Act on 5th November,2001, assailing the orders dated 9th October, 2000, which was numbered as case No. 79 of 2001, titled as Fitha vs. Dhimu Ram & others. The appellate authority allowed the appeal, unsettling the position, as decided vide orders dated 15th August, 1985. Against this order, the revision petition was filed by Shri Dhimu Ram before the Director, Consolidation under Section 54 of the Act, which was listed as Case No. 96 of 2004, titled as Dhimu Ram vs. Fitha & others, which was allowed vide orders dated 20th December, 2004. The Revisional Authority set aside the orders dated 15.5.2004, passed by the Additional Director, Consolidation, on the ground; (i) that the Appellate Authority could not have entertained the appeal after a period of 15 years and more particularly when there was a delay of more than one year in assailing the orders passed under Section 30(3) of the Act. (ii) that the matter pertaining to the land in dispute was pending before the Civil Court, therefore, the proceedings under the Act be not entertained.

Having heard the parties as also perused the record, it is clear that the orders dated 15.8.1985, have been passed in the presence of the parties and the parties had acted there upon. The Additional Director, Consolidation wrongly entertained the appeal by passing an order dated 15th May, 2004 particularly when no appeal against the orders dated 15th August, 1985 had been filed and in fact the parties had acted

upon the same for more than 15 years. In fact no application for condonation of delay, as envisaged under Section 30(4) of the Act, had been filed by the petitioner. In the absence of the same, how the appeal was entertained is a mystery. There is also no order condoning the delay in filing the appeal. In fact perusal of the orders dated 15th May, 2004, do not even indicate as to whether any issue with regard to limitation was considered at all.

In my view, the Revisional Authority has rightly interfered and set aside the orders dated 15.5.2004, resulting into dismissal of the appeal filed by the petitioner herein.

In this view of the matter, I see no reason to interfere with the impugned order. The present writ petition is dismissed.

(Sanjay Karol)
Judge.

May 3, 2007
(rana)